IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2007

CORAM:

THE HON'BLE MR.JUSTICE M.CHOCKALINGAM

C.R.P.NPD.NO. 1477 OF 2006
and
M.P.NO.1 OF 2006

Kuppusamy ... Petitioner (Defendants)

Vs.

1.Kuppammal
2.Thangamani ... Respondents (Plaintiffs)

This Civil Revision petition is filed u/s 115 CPC against the fair and final order passed in I.A.No.1092 of 2004 in O.S.No.177 of 1997 on the file of District Munsif, Sathyamangalam at Erode District dated 27.10.2005.

For petitioner:Ma.P.Thangavel
For Respondent: Mr.A.K.Kumarasamy

O R D E R

An order of the District Munsif, Sathyamangalam made in I.A.No.1092 of 2004 in O.S.No.177 of 1997 is the subject matter of challenge in this revision.

2. Heard the learned counsel on either side.

3. It was the suit for declaration and permanent injunction in respect of the immovable property mentioned in the plaint. The revision petitioner was defendant in the suit. After the appearance of the revision petitioner herein, exparte decree was passed on 14.9.1998 due to non-appearance of the sole defendant. An application was filed to set aside the exparte decree in I.A.No.1092 of 2004 with a delay of 2203 days . But the lower Court was not prepared to agree with the reasons put forth and dismissed the application. Hence the above Civil Revision Petition at the instance of the defendant /revision petitioner before this Court.

4. Advancing his argument on behalf of the revision petitioner, learned counsel would submit that it was the suit for declaration and permanent injunction and after engaging a counsel by the defendant, there was a partition between the parties where it was agreed that out of the 4.3 Hectares, 3 acres and Rs.10,000/- shall be retained

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by the plaintiff and on that understanding, the instant suit will be withdrawn. Hence,the defendant was under the impression that the suit came to an end. But, he came to know that the plaintiff has sold the share to the third party who came and interfered with the possession of the defendant and only thereafter the defendant came to know that the exparte decree came to be passed. Under such circumstances, the delay of 2203 days had occasioned. In the instant case, the delay was not due to the carelessness on the part of the defendant, but due to the circumstances and reasons stated above. Under the circumstances, the lower court should have allowed the application and he has also prepared to pay costs to the opposite party. Hence, the revision has got to be ordered.

5. The only objection raised by the learned counsel for the respondent is that though there was a delay of 2203 days, no sufficient reason was adduced to condone such an inordinate delay and hence the application was rightly dismissed and hence the order has got to be sustained.

6. After careful consideration of the rival submissions made, this Court is of the considered opinion that the order has got to be sustained. Admittedly, the suit was filed in the year 1997. The defendant who is the revision petitioner has appeared before the Court through counsel who did not file written statement and hence exparte decree came to be passed on 14.9.1998. An application was filed after a period of six years along with an application to condone the delay of 2203 days. Though the delay is high, the Court can condone the delay by allowing the application. But at the same time, the Court must looked into the reasons adduced thereon . In the instant case, the defendant has appeared through counsel, but did not file the written statement. Hence, he was set exparte. The application was filed after six years. The only reason adduced was after filing of the written statement, there was a oral partition between the parties where the property was orally divided and the petitioner came to note the same only after the property was purchased by the third party who took possession of the same. All would go to show that the defendant did not care in the case. Apart from that, the delay is also huge, inordinate and reasons adduced for such a delay at no stretch of imagination can be accepted and hence, no indulgence can be shown to the petitioner. The lower court was perfectly correct in dismissing the application and it does not require any interference by this Court and the revision petition requires only an order of dismissal. Accordingly, the Civil Revision petition is dismissed. No costs. Consequently, MP.No.1 of 2006 is also dismissed.

VJY

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

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To

1.The District Munsif,
Sathyamangalam at Erode District
+ One cc to Mr. Ma.P.Thangavel, Advocate sR 35774
JRG (co)
sg 5/7/07

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